IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 369 OF 1991

Bhagwan Suhanda. ... Petitioner.

Versus.

Commissioner of Police, Thane
and others. ... Respondents.

Ms. V.R.Raje for the Petitioner.

Ms.M.M.Deshmukh, A.P.P. for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 11th August, 2005.

P.C.:

1. Heard the learned Counsel for the Petitioner and the learned A.P.P. for the State. The prayer in this petition is for quashing the prosecution launched against the Petitioner in P.N.C.No.132/91 registered at Ulhasnagar Police Station under section 4(i)(a) of the Bombay Prevention of Gambling Act, 1887.

2. The case of the Petitioner is that he is running a video parlour at Ulhasnagar. His case is that the video machines are kept in the said video parlour strictly for amusement and are operated with the aid of metallic counter. In the year 1989, Ulhasnagar Police raided the said video parlour and seized video amusement machines, metallic counter and cash. The Petitioner took charge of the said machines under a bond. The machines were installed at Kings Video Games at Ulhasnagar. On 19th

March 1991, the said place was raided and three video machines along with three chairs, and other articles were taken charge of in P.N.C. Case No.132 of 1991 registered under section 4(1)(a) of the Bombay Prevention of Gambling Act. The contention of the Petitioner is that there is not even a whisper in the panchanama that the video machines were subjected to any activity as a result of which there is any gambling. It is contended that it is not at all spelt out from the statements of bogus customers that there was any element of gambling. The contention is that the prosecution of the Petitioner is whole untenable.

3. The Petitioner has placed reliance on the Judgment and Order passed by this Court dated 22nd October 1992 in Criminal Writ Petition No.580 of 1988. This was also a case for quashing the prosecution of the Petitioner therein under section 4(1)(a) of the Bombay Prevention of Gambling Act, 1887. The learned Single Judge relying upon the Judgment of the Supreme Court reported in (1979) 4 S.C.C. 307 (Jagat Singh Kishor Singh Darbar and others v/s. State of Gujarat) held that vital ingredients were not existing in the prosecution. Therefore, this Court quashed the prosecution.

4. The learned A.P.P. stated that the facts of the present petition and the facts of the Criminal Writ Petition No.580 of 1988 are identical and therefore,

this petition is also governed by the Judgment and order dated 22nd October 1992.

5. In view of this position, the petition must succeed. Accordingly Rule is made absolute in terms of prayer clause (i). There will be no order as to costs.

Judge.